



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 3603-99

17 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) SECNAVINST 7220.38E

Encl: (1) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed an application with this Board requesting, in effect, that his naval record be corrected by changing the reason for discharge or, in the alternative, that the record be corrected to show that the unearned portion of his Selective Reenlistment Bonus (SRB) was not recouped.

2. The Board, consisting of Mr. Pfeiffer, Ms. Madison and Ms. Taylor, reviewed Petitioner's allegations of error and injustice on 1 February 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 10 February 1995 for six years. At that time, he had completed about three and a half years of active service. The record shows that he was authorized an SRB of \$25,096.50. He was paid an initial installment of \$12,548.25 and was to be paid the remainder in annual installments of \$2,509.65.

d. On 11 June 1998, as part of a separation proceeding, Petitioner was granted custody of his minor son. On 22 June 1998

He submitted a Family Care Plan Certificate indicating that he had no one to care for his son and he could not comply with his military obligations. On 25 June 1998 he was counseled on where he could obtain assistance and was warned that unless he was available for deployments and world-wide assignments he would be processed for discharge. On 26 June 1998, Petitioner requested discharge due to parenthood. He stated, in part, as follows concerning the circumstances of his case:

... On March 17, 1998 I received an Amcross Message from my parents who notified me that my son, Austin, had been left with them. He had been there since March 1, 1998. During the months of March and April 1998, I met with my wife in front of legal and marital counseling. During this time, she expressed a need for me to take legal custody of my son due to personal reasons. As I later found out, those reasons were a need for her to go back to school and continue her career. This unfortunate decision by her has left me no choice but to request for a separation from the Navy. I have family members in Mississippi who are unable to care for my son on a full time basis, but are willing to provide part time assistance within their limitations. I have also investigated several family service day cares (sic) in the Norfolk area, with the most reasonable being \$135 a week. With this not including duty days and underway time, the prices can quickly become more expensive. I believe that a separation will resolve the problem for the Navy, the Command, and myself.

On 17 July 1998 Petitioner was notified of discharge processing due to parenthood and did not object to the proceedings. Subsequently, the commanding officer, USS ENTERPRISE (CVN 65) directed discharge and stated that the command had investigated the facts of the case and confirmed Petitioner's version of events. He was honorably discharged on 21 August 1998 by reason of parenthood.

e. Sometime after discharge, Petitioner received a bill because of his indebtedness to the Navy. Although there are some relatively minor items, most of the indebtedness was caused by the unearned portion of his SRB of \$8,378.96. This indebtedness was caused, in large part, by the initial SRB payment of \$12,548.25. The Board is aware that the law which established the SRB program allows individuals who are discharged because of hardship not only to keep all the SRB payments already received,

but also to receive all the unpaid installments. However, recoupment of the unearned portion of the SRB is required when an individual is discharged because of parenthood.

g. Reference (b) sets forth the criteria for remission or waiver of indebtedness or erroneous payments made to or on behalf of members and former members of the Naval service. This instruction implements Title 10 U.S.C. 6161 and 10 U.S.C. 2774. Waiver action based on 10 U.S.C. 2774 is precluded in this case since the payment was legal and proper when paid. However, under the provisions of 10 U.S.C. 6161 a remission of the indebtedness of an enlisted member on active duty is authorized provided the request for remission is approved by the Secretary of the Navy or a designee prior to the individual's honorable discharge.

h. The criteria for requesting such a remission of indebtedness are set forth in reference (b). That reference states that an investigation must be conducted into the facts and circumstances surrounding the request for remission. The reference also directs that active duty members be advised of their right to request remission consideration under the provisions of the reference immediately upon discovery of an overpayment. There is no indication in the record that Petitioner was ever advised as required. However, the time between the decision to discharge Petitioner and the actual discharge was probably insufficient to get a decision on a request for remission even if he had been properly advised.

i. The Board is aware that in the past favorable action has been taken in similar cases if there is some degree of hardship, but the Board did not wish to change the reason for discharge to hardship, because the Petitioner would then receive the unpaid installments of the bonus.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. Concerning the request for a change in the reason for discharge, the Board is aware that changing the reason for separation so that recoupment is not required would require the payment of any unpaid installments in addition to precluding recoupment of the unearned portion of the SRB. The Board believes that such a windfall is not warranted in this case.

The Board notes that Petitioner's wife did not desire to care for his son and the court granted him custody. The Board also notes that the command investigated the case and found that


Petitioner's statements in this matter were accurate. Therefore, it appears that Petitioner became a single parent through no fault of his own and was unable to fulfill his obligation to the Navy. Given the circumstances, the Board concludes that remission of the indebtedness is appropriate.

Remission can be accomplished by showing that a request for remission of indebtedness was granted under the provisions of Title 10 U.S.C. 6161 and reference (b). Paragraph 7.a of reference (b) indicates that a decision on the request for remission must be made prior to discharge. Therefore, the Board concludes that the record should show that Petitioner's request for remission of indebtedness due to the SRB overpayment was approved by the Secretary of the Navy on 30 April 1997. The amount approved for remission should be \$8,378.96.

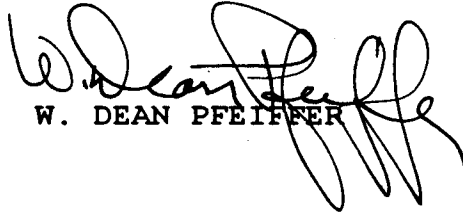
RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he requested remission of his indebtedness and that this request was favorably endorsed by his commanding officer. The amount recommended for remission is \$8,378.96.
 - b. That Petitioner's record be further corrected to show that the request for remission was approved by the Secretary of the Navy on 30 April 1997, the day of his discharge.
 - c. That this Report of Proceedings constitute the report of investigation or written report required by reference (b), and the Report of Proceedings be forwarded to the Defense Finance and Accounting Service for implementation under the provisions of the regulations.
 - d. That Petitioner's request for a change in the reason for his discharge be denied.
 - e. That this Report of Proceedings be filed in Petitioner's naval record.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Reviewed and approved:

 MAR 3 2000

Charles L. Tompkins
Deputy Assistant Secretary of the Navy
(Personnel Programs)